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ANSWER TO PETITION AND BRIEF FOR RESPONDENT IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1948.

No. 518.

ATLANTIC FREIGHT LINES, INC.,
*Petitioner,*

*v.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
*Respondent.*

TARIFF & ENFORCEMENT DIVISION, PHILADELPHIA CHAPTER, PENNSYLVANIA MOTOR TRUCK ASSOCIATION,
SUPER HIGHWAY EXPRESS, INC.,
PHILADELPHIA-PITTSBURGH CARRIERS,
LANCASTER TRANSPORTATION COMPANY,
KRAMER BROS. FREIGHT LINES,
W. HUNTER ATKINSON, INC.,
*Intervening Respondents.*

## ANSWER TO PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA.

### I.

### COUNTER-STATEMENT OF QUESTIONS INVOLVED.

1. Did the Pennsylvania Public Utility Commission have jurisdiction to determine whether petitioner's transportation between points in Pennsylvania via an interstate route was a subterfuge to evade regulation by the State Commission, and does such a determination involve a Federal Constitutional question.

2. Was not the transportation by petitioner for compensation of sugar from Philadelphia, Pennsylvania to McKeesport, Pennsylvania over a route from Philadelphia via

U. S. Highway 1 to Baltimore, Maryland, thence over U. S. Highway 40 through Maryland and Pennsylvania to Uniontown, Pennsylvania, thence over Pennsylvania Highway 51 to Pittsburgh, Pennsylvania, thence over Pennsylvania Highway 30 to McKeesport, Pennsylvania, a subterfuge to evade regulation by the Pennsylvania Public Utility Commission.

## II. COUNTER-HISTORY OF THE CASE.

On October 28, 1946, the Pennsylvania Public Utility Commission upon its own motion instituted a complaint against Atlantic Freight Lines, Inc., petitioner herein, for violation of the Pennsylvania Public Utility Law. The complaint alleges that on or about August 17, 1946, Atlantic Freight Lines, Inc., transported for compensation 30,000 pounds of sugar from Philadelphia, Pennsylvania to McKeesport, Pennsylvania via an interstate route through Baltimore, Maryland. The complaint also alleges that on or about September 10 and 11, 1946, Atlantic Freight Lines, Inc., transported for compensation, 30,000 pounds of sugar from Philadelphia, Pennsylvania to Pittsburgh, Pennsylvania over highway routes wholly within the State of Pennsylvania.

The Pennsylvania Public Utility Commission, by its order of March 2, 1948, ordered Atlantic Freight Lines, Inc., to cease and desist from the rendition of service as a motor carrier in intrastate commerce and sustained the complaint as to the violations mentioned above (R. 321a-258a). *Atlantic Freight Lines, Inc., has admitted the illegal transportation that occurred on or about September 10 and 11, 1946,* and the only question now before your Honorable Court on appeal is the cease and desist order as to the transportation that occurred on or about August 17, 1946 of 30,000 pounds of sugar from Philadelphia, Pennsylvania to McKeesport, Pennsylvania by an interstate routing through Baltimore, Maryland.

On April 1, 1948, the Superior Court granted permission for leave to intervene as appellees, Tariff and Enforcement Division, Philadelphia Chapter, Pennsylvania Motor Truck Association, Inc., Philadelphia-Pittsburgh Carriers, Super Highway Express, Inc., Lancaster Transportation Company, Kramer Brothers Freight Lines, Inc., and W. Hunter Atkinson (R. 273-274). The Tariff and Enforcement Division, Philadelphia Chapter, Pennsylvania Motor Truck Association, Inc., was created to provide service and cooperate with the Pennsylvania Public Utility Commission in the enforcement of the Pennsylvania Public Utility Law and is vitally interested in the outcome of this case. Philadelphia-Pittsburgh Carriers, Super Highway Express, Inc., Lancaster Transportation Company, Kramer Brothers Freight Lines, Inc., and W. Hunter Atkinson are common carriers by motor vehicle authorized by the Pennsylvania Public Utility Commission to perform transportation of general commodities between all of the points involved in the complaint proceeding brought by the Pennsylvania Public Utility Commission. Each of these carriers are vitally interested in the outcome of this case as Atlantic Freight Lines, Inc., the petitioner herein, is operating in direct competition with these carriers and in violation of the Pennsylvania Uublic Utility Law.

From the order of the Pennsylvania Public Utility, petitioner appealed to the Superior Court of Pennsylvania which affirmed the order of the commission (R. 283-289). A Petition for Allowance of an Appeal to the Supreme Court of Pennsylvania was refused (R. 290-294). Petitioner now seeks a writ of Certiorari.

## III. ARGUMENT.

**1. The Pennsylvania Public Utility Commission Has Jurisdiction to Determine Whether Petitioner's Transportation Between Points in Pennsylvania Via an Interstate Route Is a Subterfuge to Evade Regulations by the State Commission and Such Determination Does Not Involve a Federal Constitutional Question, Nor Interpretation of Federal Law.**

The jurisdiction of the Interstate Commerce Commission over interstate transportation by motor vehicles, was conferred by the Federal Motor Carrier Act, 1935 (49 U. S. C. A. 301 et seq.).

49 U. S. C. A. 302 (b) reads:

> "Nothing in this Chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof (Feb. 4, 1887, c. 104, Part II, 202 as added Aug. 19, 1935, c. 498, 49 Stat. 543)."

Thus Congress has by the very statute which conferred jurisdiction upon the Interstate Commerce Commission over interstate transportation of motor carriers, expressly recognized the power of each State to regulate intrastate commerce of motor carriers on the highways of the individual States.

However, petitioner contends that the Federal Government has supreme power to regulate interstate commerce and that necessarily includes the power to determine what is the interstate commerce which is the subject of regulations. With this statement of the law we have no dispute. But petitioner further contends that since the Interstate Commerce Commission has issued a certificate of

public convenience and necessity authorizing appellant to transport as a common carrier between Philadelphia, Pennsylvania and McKeesport, Pennsylvania, by a combination of its routes, that the Federal Government through its designated agency has conclusively determined that petitioner may transport shipments intrastate in character between Philadelphia and McKeesport under its certificate whether such shipments be bona fide interstate shipments or not. And it contends that the Public Utility Commission has no jurisdiction to interfere with such transportation. This argument is unsound for several reasons and has been rejected by both the U. S. Supreme Court and the Superior Court of Pennsylvania in decisions involving practically the same facts. *The issues involved in this case have conclusively been decided by your Court in the two cases below.* In *Eichholz v. Public Service Commission* (1939), 306 U. S. 268 it was held that even though the Interstate Commerce Commission had taken provisional jurisdiction of the transportation involved, namely between points in the same State via another State, that nevertheless, the State Commission had authority to find from the facts that such operations were a subterfuge and enjoined such transportation.

In *Ryan, et al. v. Pa. P. U. C.* (1940), 143 Pa. Superior Ct. 517, 17 A. 2d 637 (certiorari to the Supreme Court of the United States denied, 314 U. S. 640), the facts were very similar to those of this case. In that case the motor carrier operated between Pittsburgh, Pennsylvania and Uniontown, Pennsylvania via Wheeling, West Virginia. The carrier had pending before the Interstate Commerce Commission an application for authority to perform such transportation under the so-called "grandfather clause" of the Federal Motor Carrier Act. The Interstate Commerce Commission had issued a provisional order authorizing such transportation and had found that such operations were bona fide. The Superior Court of Pennsylvania sustained the finding of the Pennsylvania Public Utility Commission that it had jurisdiction to determine whether such operations

were bona fide interstate commerce or a subterfuge and in reality intrastate commerce. Said the Court at page 526:

> "The Federal Motor Carrier Act of August 9, 1935 48 U. S. C. A. sec. 302 (c) expressly recognized the right of the several States to regulate intrastate carriage."

And at page 525, it was stated:

> "Whether such transportation is bona fide interstate commerce or a subterfuge is primarily an administrative question involving facts to be determined by the Commission. If, as here, there is sufficient evidence to support its findings, we do not interfere therewith. It is not our duty to exercise our independent judgment as no question of confiscation is involved."

And at page 526, it was stated:

> "The provisional order of the Interstate Commerce Commission authorizing interstate commerce between certain fixed termini certainly cannot be construed as granting authority to appellant to engage in the kind of transportation here questioned nor does it interfere with the Pennsylvania Commission's jurisdiction."

In *Blackmore, et al. v. P. S. C.* (1936), 120 Pa. Superior Ct. 437, the Pennsylvania Court held that the transportation of freight between two points in the same State constituted intrastate transportation, even though the transportation was by a route partly in another State, where such route was abnormal and merely a subterfuge to avoid regulations. Said the Court at page 448:

> " 'Interstate Commerce, in order to be entitled to the protection of the federal Constitution, must be real and bona fide. The question whether it is so is open in inquiry. . . . But the commerce thus protected is real commerce. It has never been held, and we believe

never intended, that a mere fiction of interstate commerce may be so availed of as to deprive a state of its power to enforce sound regulation of the use of its highways in intrastate commerce': Inter-City Coach Co. v. Atwood, 21 Fed. (2) 83, 85. (Appeal refused by Supreme Court, 278 U. S. 663.) As we have indicated, the question of subterfuge is one of fact to be determined by the commission, and we are all of the opinion that the evidence offered was sufficient to sustain such a finding."

And so in this case there is no question but what the Pennsylvania Public Utility Commission had jurisdiction to determine whether or not the petitioner's operation was a subterfuge and in reality intrastate commerce subject to its jurisdiction. Under the language of the *Ryan* case, it is immaterial that the Interstate Commerce Commission had not finally acted by issuing a certificate. A provisional compliance order is just as much a taking of jurisdiction by the Federal Government as would be a final order issued after a determined length of time. *The only real issue is whether or not the Interstate Commerce Commission had actually made any finding as to whether the operation complained of was bona fide and not a subterfuge and if so whether or not the certificate issued by the Interstate Commerce Commission actually authorized transportation between Philadelphia, Pennsylvania and McKeesport, Pennsylvania of shipments intrastate in character or otherwise.*

On this issue petitioner contends that the certificate of public convenience and necessity issued to it under section 206 (a) of the Federal Motor Carrier Act (49 U. S. C. A. 306 (a)) was conclusive. This section known as the "grandfather clause" reads as follows:

". . . Provided, however, That . . . if any such carrier or predecessor in interest was in *bona fide operation* as a common carrier by motor vehicle on

> June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since the time . . . the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate was made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after October 1, 1935, . . ."

A reference to the report and order and the certificate issued by the Interstate Commerce Commission as appears in the record beginning at Page 202 (a) reveals that the position of the petitioner cannot be sustained. Nowhere in the report and order of the Interstate Commerce Commission or in the certificate issued subsequent thereto is there any finding that the type of operation complained against was ever in issue before the Interstate Commerce Commission. There is no evidence of any shipments originating in Pennsylvania for destination to another point in Pennsylvania having ever been brought to the attention of the Interstate Commerce Commission for adjudication as to whether such shipments were bona fide interstate commerce. The report and order of the Interstate Commerce Commission set forth beginning at page 202 (a) of the record refers to three prior reports and orders reported in the Interstate Commerce Commission Reports at 41 M. C. C. 654, 43 M. C. C. 866 and 43 M. C. C. 866. These reports are printed in full in the record at pages 308-312. In each of these reports the question of whether transportation between points in Pennsylvania was bona fide was not in issue as apparently there were no such shipments transported by petitioner until recently. Thus, the issue as to whether transportation between points in Pennsylvania was bona fide interstate commerce or a subterfuge was never before the Interstate Commerce Commission at any time and of course there

could never have been a finding that such transportation was bona fide. The expression "bona fide operation" as contained in the "grandfather clause" has been defined by our Federal Courts. In *Goncz v. Interstate Commerce Commission* (1942) 48 F. Supp. 286, page 288, it was stated:

> "The test of 'bona fide operation' carries the connotation of 'substantial, as distinguished from incidental, sporadic, or infrequent service'. United States v. Carolina Freight Carriers Corp., 1942, 315 U. S. 475, 480, 481, 62 S. Ct. 722, 726, 86 L. Ed. 971. The Commission's responsibility to bring greater order and stability to our national transportation system is an additional reason for 'insistence upon a showing of substantial service in that territory which is sought to be covered by a certificate under the "grandfather clause" '. United States v. Carolina Freight Carriers Corp., supra, 315 U. S. at page 481, 62 S. Ct. at page 726, 86 L. Ed. 971".

In *Loving v. United States* (1940), 32 F. Supp. 464, at page 466, it was stated:

> "At the outset, it should be noted that in considering the expression contained in the Act, 'in bona fide operation', the United States Supreme Court stated that such an expression 'suggests absence of evasion, excludes the idea that mere ability to serve as a common carrier is enough, includes actual rather than potential or simulated service, . . .' McDonald v. Thompson, 305 U. S. 263, 59 S. Ct. 176, 178, 83 L. Ed. 164."

Thus, the Interstate Commerce Commission in granting petitioner a certificate under the "grandfather clause" did so after finding that its operations were bona fide to the extent that the prior operations had been substantial and actual rather than potential or simulated. The granting and the certificate based on bona fide operations does

not necessarily mean that the question as to whether certain operations, namely transportation between points in one State via another State, were in fact bona fide interstate commerce and not operations in the nature of a subterfuge. If such shipments were not presented to the Interstate Commerce Commission no findings concerning whether they were bona fide could be made. Even though the certificate granted to petitioner authorized by a combination of the routes, transportation of interstate shipments by an interstate route between Philadelphia and McKeesport such authorization if intended must have been based on proof of shipments that were interstate in character when originally picked up in Philadelphia in that they had come into Philadelphia from outside the State by rail, water, or by another truck line. But in any event the reports and orders of the Interstate Commerce Commission upon which petitioner's certificate is based reveal no evidence of any shipments of the nature now contended to be a subterfuge. Nor can it be said that this is a collateral attack on the certificate. It is merely explaining and interpreting the certificate as issued. Certainly appellant cannot complain as the report and order of the Interstate Commerce Commission upon which the certificate is based was placed in the record by it and not by the Pennsylvania Public Utility Commission.

The above argument is based on the assumption that the certificate of public convenience and necessity of petitioner authorized by a combination of routes transportation of interstate shipments between Philadelphia and the Pittsburgh-McKeesport area. However, we do not believe that the certificate as issued authorized any transportation between Philadelphia and the Pittsburgh-McKeesport area.

Sec. 208 (a) of the Federal Motor Carrier Act (49 U. S. C. A. 308 (a)) states:

> "Any certificate issued . . . shall specify the service to be rendered and the routes over which the

fixed termini, if any, between which * * * the motor carrier is authorized to operate;"

The Superior Court of Pennsylvania in this case adequately disposed of the question as to whether or not petitioner's certificate authorized any transportation between Philadelphia and Pittsburgh-McKeesport areas. See *Atlantic Freight Lines, Inc. v. Public Utility Commission* (1948), 163 Pa. Superior Ct. 215 (60 A. 2d), (R. 283-289). Said the Court at page 220 (Record 286):

"It seems reasonably clear from the above language of the certificate that what was authorized by the commission was interstate transportation over stated highways from Pittsburgh to Baltimore, Maryland, to Newark, New Jersey, and return, and that common carrier service was permitted between certain intermediate points of origin in one state and of destination in another. Clarification of the order, indicating that intent, is to be found in the Report and Order of the Interstate Commerce Commission in the proceeding in which appellant's interstate rights were adjudicated. It was there recognized that Atlantic was entitled to 'grandfather' rights acquired from a predecessor. Appellant was entitled to the benefit of the proviso of 206 of the Motor Carriers Act, 49 U. S. C. A. 306 (a), relating to 'grandfather' rights, only to the extent of actual and bona fide operations in interstate commerce on or before June 1, 1935. Loving, et al. v. United States, 32 F. Supp. 464. The Interstate Commerce Commission, on the evidence before it, found that the prior shipments in the 'grandfather' service were between Baltimore, on the one hand, and, on the other, points in West Virginia and western Pennsylvania, including the Pittsburgh area, and between New York, N. Y., and certain northern New Jersey points, on the one hand, and the Pittsburgh area, on the other.' There is no reference in the report to any evidence of ship-

ments between Philadelphia and the Pittsburgh area from which 'grandfather' or any other rights to transportation between these two points could be inferred. The Interstate Commerce Commission approved transportation from and to the Pittsburgh area along an interstate route which included Philadelphia but only as to shipments between states. It did not authorize by implication or otherwise the transportation of goods, between points of both origin and delivery within Pennsylvania, though over Maryland highways. Since the commission has not characterized such transportation interstate, our Public Utility Commission had jurisdiction to inquire whether the commerce in question was intrastate, in fact. This language of the Chief Justice in Eichholz v. Public Service Commission, 306 U. S. 622, 59 S. Ct. 532, is pertinent: 'We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected.' Ryan, et al. v. Pa. P. U. C., 143 Pa. Superior Ct. 517, 17 A. 2d 637, (allocature refused, and certiorari to the Supreme Court of the United States denied, 314 U. S. 640), is to the same effect. In both the Eichholz and the Ryan cases the factual background was somewhat similar to that of the present proceeding."

From the above discussion it appears conclusively that petitioner's certificate did not authorize the transportation complained of and that, therefore, the Pennsylvania Public Utility Commission had jurisdiction to determine whether such transportation was a subterfuge and having so determined there is no question concerning the Federal Constitution or Federal Law involved in these proceedings.

**2. Petitioner's Operation Between Philadelphia, Pennsylvania, and McKeesport, Pennsylvania, Was a Subterfuge to Evade the Jurisdiction of the Pennsylvania Public Utility Commission and Such Determination Does Not Involve a Federal Constitutional Question, Nor Interpretation of Federal Law.**

In determining whether or not the shipment alleged in the Pennsylvania Public Utility Commission's complaint was a subterfuge, the following factors have been considered to be important:

(a) Whether or not the tariff rate charged for the transportation via the interstate route is less than the lawfully charged rate via a wholly intrastate route;

(b) Whether or not the distance via the interstate route is longer than via the intrastate route;

(c) Whether or not the time involved in the transportation is greater via the interstate route than via the wholly intrastate route;

(d) Whether or not the carrier had any legitimate reason for taking an interstate route because of terminals located in another state or whether or not goods were to be delivered or picked up on the route in a state other than the state of origin and destination.

Applying these factors to the evidence in this case, the uncontradicted testimony reveals that the intrastate rate for the transportation of the commodity involved in the Commission's Complaint at Paragraph 2 was 49¢ per hundred pounds (R. 169a). The interstate tariff rate was only 35¢ per hundredweight (R. 142a). The distance via the route wholly within the State of Pennsylvania was admitted by stipulation of counsel to be: via one route, 293.55 miles; via another intrastate route 287.44 miles; and via another intrastate route, 313 miles. The route which petitioner, Atlantic Freight Lines, was authorized to use under its certificate granted by the Interstate Commerce Commission in-

volved a distance of 348 miles (R. 156, 157, 158, 159a). The evidence revealed that the normal route was via the intrastate route and involved a driving time of 10 hours while the interstate route involved a driving time of round 18 hours (R. 150a). The evidence is further uncontradicted that petitioner had no legitimate operating reason for using the interstate route via Baltimore. It may well be that petitioner had a terminal at Baltimore, but the testimony is definite that the truck involved in this Complaint did not report to the terminal nor was any of the shipment unloaded at the terminal nor any pick-up made at the terminal located in Baltimore. Further, the evidence is clear that no pick-up or delivery was made at any point outside the State of Pennsylvania. There is further no evidence that any legitimate interstate shipments were dependent upon the petitioner operating via an interstate route. Thus, the evidence establishes all of the facts which the courts have held to be important in determining whether or not transportation between two points in one State via another is a subterfuge. See *Interstate Busses Co. v. Holyoke Street Railway Co.,* (1927) 273 U. S. 45; *Eichholz v. Public Service Commission,* (1939) 306 U. S. 268; *Blackmore, et al. v. P. S. C.,* (1936) 120 Pa. Superior Ct. 437; *Railway Express Agency, Inc. v. Pa. P. U. C.,* (1939) 134 Pa. Superior Ct. 405; *Ryan, et al. v. Pa. P. U. C.,* (1940) 143 Pa. Superior Ct. 517.

In *Ryan, et al. v. Pa. P. U. C., supra,* the respondent operated between two points in Pennsylvania via another state. The respondent had been authorized by the Interstate Commerce Commission to operate via the interstate route by the issuance of a compliance order to it from the Interstate Commerce Commission. The Commission in that case held that the operation by the respondent was a subterfuge, and issued a cease and desist order. The Superior Court of Pennsylvania affirmed the Commission's decision, and in its discussion the Court stated that the fact that a higher rate was charged via the interstate route was significant, and the fact that the interstate route was longer

was also significant in sustaining the order that the operation was a subterfuge.

In *Eichholz v. Public Service Commission, supra,* the facts revealed that Eichholz held a permit from the Missouri Public Service Commission to operate as a motor carrier over the highways of Missouri between points in Missouri and points beyond that State, exclusively in interstate commerce. He did not hold an intrastate permit. The Missouri Commission revoked the interstate permit issued by it to Eichholz on the ground that he had unlawfully engaged in intrastate commerce under the pretense of transporting interstate business; that as a subterfuge he had hauled freight originating in St. Louis, Missouri and destined to Kansas City, Missouri and vice versa through his terminal in Kansas City, Kansas, which was located less than one-half mile from the Missouri state-line. In determining that the operations of Eichholz were a subterfuge the Court stressed the fact that in transporting between points in Missouri, Eichholz after reaching the terminal in Kansas City, Kansas, in many instances did not unload the merchandise, but returned the shipments to Missouri and having only changed drivers or tractors.

In the operation complained of the subterfuge is even more clear. Petitioner maintained a terminal at Baltimore, Maryland, but the evidence is uncontradicted that the truck driver in passing through Baltimore did not stop at the terminal nor did he even call the terminal for instructions (R. 115a). The evidence is uncontradicted that no shipments were picked-up or delivered outside the State of Pennsylvania nor was any bona fide interstate shipment dependent upon the shipments originating and destined between points in Pennsylvania.

There is no evidence that Baltimore, Maryland was the hub of petitioner's operations. In fact the actual hub of petitioner's operations is Uniontown, Pennsylvania (R. 139a). Petitioner has completely failed to establish any legitimate reason for using the interstate route for purely

intrastate shipments. Its only excuse is that the only routes that could be used are the interstate routes as that is the only authority it has. But this merely begs the question. The Public Utility Commission has found that petitioner has no such authority for transporting shipments between points in Pennsylvania and it is submitted that not only does the Commission have jurisdiction to make such a finding but that the facts amply support the finding.

Petitioner contends it has a legitimate reason for using the interstate route based on the fact that the intersate route had been set up some 15 years ago because of road conditions in Pennsylvania. But petitioner's President admitted that the route was set up for bona fide interstate shipments which originated or were destined between points in the western part of Pennsylvania and points in New Jersey and New York. See Record 138a. There is absolutely no evidence that this route was ever set up for the transportation of shipments originating and destined in Pennsylvania. Petitioner further contends that this operation has been conducted for many years and that only recently has the Public Utility Commission ever made complaint. The answer to this is clear and conclusive. It is only recently that petitioner began such operations, namely shipments originating in one point in Pennsylvania for delivery to another point in Pennsylvania. That is undoubtedly the reason that the question of whether or not these shipments were bona fide was never raised in the proceedings before the Interstate Commerce Commission and is the reason that the Pennsylvania Public Utility Commission never appeared and intervened in those proceedings and that is the reason that no action has been taken by the Pennsylvania Public Utility Commission until recently.

It is important to note two other factors which point conclusively to the operations of the petitioner being a subterfuge. The original complaint brought against the petitioner alleged transportation between Philadelphia, Pennsylvania and Pittsburgh, Pennsylvania via routes wholly

within the State of Pennsylvania. At the hearing on the complaint it was conclusively proven that such transportation was performed by routes wholly within the State of Pennsylvania without authortiy from the Pennsylvania Public Utility Commission. It is interesting to note that petitioner took no appeal from this finding of the Pennsylvania Public Utility Commission. Thus, we have at least one incident of record where the appellant admitted illegal transportation. *The fact that petitioner has transported directly between Philadelphia, Pennsylvania and Pittsburgh, Pennsylvania, is an important factor to be considered in determining whether or not petitioner's contention that the route via Baltimore is a legitimate route.*

The other important factor to be noted in this case is that the motor vehicles used in the illegal operations were leased with drivers on a per trip basis from another company named Eastern Freight Lines (R. 68a, 69a, 97a, 101a). Although the testimony shows that the vehicles were leased there was no written lease in the possession of both parties and the method of compensation was on a per diem basis on a percentage of the gross revenue obtained from the shippers for the transportation of the merchandise (R. 101a).

Under this method of operation Atlantic Freight Lines, Inc., did not control the supervision and operation of the drivers, but that was left to an alleged eastern manager from whom the vehicles were actually leased (R. 66a, 94a-95a). Under this method of operation, which is of doubtful legality, it is no wonder that Atlantic Freight Lines, Inc., could not control the routes over which its drivers operated and as set forth above on some occasions the trucks operated directly over routes entirely within the State of Pennsylvania and the illegality of that type of operation is admitted even by Atlantic Freight Lines, Inc. Certainly a method of operation over which the certificated carrier cannot even control the routes over which it operates should be only another factor in conclusively showing that petitioner's operations were a subterfuge and not subject to the

jurisdiction nor the control of the Interstate Commerce Commission.

### 3. Conclusion.

Under the decided cases the facts as set forth in this record conclusively reveal that the operations of the petitioner were a subterfuge to evade the jurisdiction of the Pennsylvania Public Utility Commission. The Interstate Commerce Commission did not by its certificate authorize operations of an intrastate nature between Philadelphia and the Pittsburgh-McKeesport area via Baltimore, Maryland. For these reasons the issues involved in this proceeding are strictly one to be resolved by the Pennsylvania Public Utility Commission and the appellant courts of the State of Pennsylvania. There is no question of interpretation of Federal Law involved. There is no question of interpretation of the Federal Constitution involved.

WHEREFORE, we respectfully urge your Honorable Court to deny the prayer of the Petitioner for Writ of Certiorari.

Respectfully submitted,

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